

## 37 Am. Jur. 2d Fraud and Deceit § 40

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### Fraud and Deceit

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### III. Means of Perpetration

#### A. In General

## § 40. Modes of communication of representation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

Fraudulently producing a false impression upon the mind of another person is the gist of deceit,<sup>1</sup> and where this is accomplished, it is not important whether the means of accomplishing it are the words or acts of the defendant.<sup>2</sup> In other words, if deception is accomplished, the form of deceit is immaterial.<sup>3</sup> Equity is not concerned with the means by which fraud is done; rather, it deals with the results arising from the fraud.<sup>4</sup>

Fraud may be found from a variety of circumstances, and there is no general rule for determining what facts will constitute it,<sup>5</sup> but it is to be found or not found according to the special circumstances of each particular case.<sup>6</sup>

With regard to modes of perpetration, the methods of defrauding may be broadly classified as misrepresentation, concealment, or false pretenses.<sup>7</sup> The law recognizes that fraud can occur by omission and places on one who undertakes to disclose material information a duty to disclose that information fully.<sup>8</sup> However, fraud cannot be the basis of an action if it appears that the party alleging the fraud had equal and ample opportunity to prevent it and yet made it possible through its failure to exercise due diligence.<sup>9</sup>

It does not matter, as far as the right of action is concerned, whether the means of accomplishing a deception are complex or simple, that is, a deep-laid scheme of swindling or a direct falsehood; a combined effort of a number of associates or the sole effort of a solitary individual, provided the deception is effected, and the damage complained of is the consequence of the deception.<sup>10</sup> Fraud can consist of anything calculated to deceive, whether by a single act or a combination<sup>11</sup> or whether it be by direct falsehood or innuendo.<sup>12</sup>

### Observation:

Misrepresentations made indirectly to an injured party can serve as the basis for an action for fraud as well as an action for negligent misrepresentation.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The gist of a fraudulent misrepresentation is the producing of a false impression upon the mind of the other party, and, if this result is accomplished, the means of its accomplishment are immaterial. [Sutton v. David Stanley Chevrolet, Inc., 2020 OK 87, 475 P.3d 847 \(Okla. 2020\)](#), as corrected, (Oct. 21, 2020).

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> § 27.
- <sup>2</sup> [Noved Realty Corp. v. A.A.P. Co., 250 A.D. 1, 293 N.Y.S. 336 \(1st Dep't 1937\)](#).
- <sup>3</sup> [Kaze v. Compton, 283 S.W.2d 204 \(Ky. 1955\)](#).
- <sup>4</sup> [Madison Square Garden Corp. v. Universal Pictures Co., 255 A.D. 459, 7 N.Y.S.2d 845 \(1st Dep't 1938\)](#).
- <sup>5</sup> § 1.
- <sup>6</sup> [Citizens Sav. and Loan Ass'n v. Fischer, 67 Ill. App. 2d 315, 214 N.E.2d 612 \(5th Dist. 1966\)](#).
- <sup>7</sup> [Downey v. Finucane, 205 N.Y. 251, 98 N.E. 391 \(1912\)](#).
- <sup>8</sup> [Pitts Sales, Inc. v. King World Productions, Inc., 383 F. Supp. 2d 1354 \(S.D. Fla. 2005\) \(applying Florida law\)](#).
- <sup>9</sup> [Martin v. Centre Pointe Investments, Inc., 310 Ga. App. 253, 712 S.E.2d 638 \(2011\)](#).
- <sup>10</sup> [Berkowitz v. Lyons, 98 N.J.L. 198, 119 A. 20 \(N.J. Ct. Err. & App. 1922\)](#); [Pennebaker v. Kimble, 126 Or. 317, 269 P. 981 \(1928\)](#).
- <sup>11</sup> [Smith v. The Equitable, 27 F. Supp. 2d 565 \(E.D. Pa. 1998\) \(applying Pennsylvania law\)](#).
- <sup>12</sup> [Delahanty v. First Pennsylvania Bank, N.A., 318 Pa. Super. 90, 464 A.2d 1243 \(1983\)](#).
- <sup>13</sup> [Gouveia v. Citicorp Person-to-Person Financial Center, Inc., 101 N.M. 572, 686 P.2d 262 \(Ct. App. 1984\)](#). As to the elements of actions for fraud and negligent misrepresentation, see §§ 22 to 30.